

**DOCKET NUMBER 62**

U.S. DEPARTMENT OF JUSTICE  
SOUTHERN DISTRICT OF CALIF.

## BANKRUPTCY NO. 05-05926-PBINVL

Tax I.D. (EIN) #: /S.S.#:XXX-XX- Debtor.

<sup>1</sup>If you were served electronically or by mail, you have three (3) additional days to take the above-stated actions.

**CERTIFICATE OF SERVICE**

I, the undersigned whose address appears below, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age;

That on 29th day of May, 2006, I served a true copy of the within NOTICE OF MOTION AND HEARING by [describe here mode of service]

by placing the document into a sealed envelope with postage thereon fully prepaid in the United States mail at Woodland Hills, California addressed as set forth below

on the following persons [set forth name and address of each person served] and/or as checked below:

[ ] Attorney for Debtor (if required):

L. Scott Keehn  
Robbins & Keehn, APC  
530 "B" Street, Ste 2400  
San Diego, CA 92101

[ ] For Chpt. 7, 11, & 12 cases:

UNITED STATES TRUSTEE  
Department of Justice  
402 West Broadway, Suite 600  
San Diego, CA 92101

[ ] For ODD numbered Chapter 13 cases:

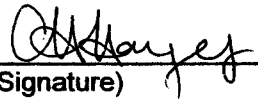
THOMAS H. BILLINGSLEA, JR., TRUSTEE  
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[ ] For EVEN numbered Chapter 13 cases:

DAVID L. SKELTON, TRUSTEE  
525 "B" Street, Suite 1430  
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I certify under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2006  
(Date)

Cassidy Hayes   
(Typed Name and Signature)

21800 Oxnard St. Ste 840  
(Address)

Woodland Hills, CA 91367  
(City, State, ZIP Code)

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FILED PT  
2006 JUN -1 AM 9:30

U.S. BANKRUPTCY CT  
SD DIST OF CALIF

9 UNITED STATES BANKRUPTCY COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11 SAN DIEGO DIVISION

12 In Re:

13 FRANCIS J. LOPEZ,  
14 Alleged Debtor

CASE NO. 05-05926-PBINV

Involuntary Chapter 7

15 **NOTICE OF MOTION AND MOTION**  
16 **BY ALLEGED DEBTOR FOR**  
17 **SUMMARY JUDGMENT AND AN**  
18 **ORDER DISMISSING**  
19 **INVOLUNTARY PETITION;**  
20 **DECLARATIONS OF M. JONATHAN**  
21 **HAYES, FRANCIS J. LOPEZ AND**  
22 **STEVEN DAVIS IN SUPPORT**  
23 **THEREOF**

24 Date: June 26, 2006  
25 Time: 2:00 p.m.  
26 Ctrm: 4

27 TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY  
28 JUDGE, TO PETITIONING CREDITORS ALAN STANLY, NORTHWEST FLORIDA  
DAILY NEWS, ALTERNATIVE RESOLUTION CENTER:

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1 an additional petitioning creditor. (See Exhibit "C") Alternative Resolution Center does  
2 not qualify as a petitioning creditors as no debt is owed to it or was owed to it on June 30,  
3 2005.

4 Francis J. Lopez and Alan Stanly have been involved in significant litigation against  
5 each other since before the bankruptcy filing of their entity Prism Advanced Technologies,  
6 Inc. ("Prism") in 2003. This litigation has been bitterly fought for the past three years and  
7 is now pending in Superior Court between the parties, namely Lopez v Stanly, Case No.  
8 GIN029692, filed on May 14, 2003, San Diego Superior Court, North County. In that  
9 matter, Mr. Lopez is suing Mr. Stanly for numerous causes of action, including invasion of  
10 privacy, breach of fiduciary duty, trespass and identity theft. Mr. Stanly filed a cross-  
11 complaint, of course.

12 Recently, in a second case, Mr. Stanly was successful in obtaining a judgment  
13 against Mr. Lopez for approximately \$50,000 relating to a guarantee both had made to  
14 Union Bank of a Prism loan. This involuntary chapter 7 petition is simply an extension of  
15 the litigation and a new strategy by Mr. Stanly to cause as much business and personal  
16 pain to Mr. Lopez as possible.

17 Recently in a third case, Mr. Stanly sued the wife of Lopez in San Diego Limited  
18 Jurisdiction court claiming that Mrs. Stanly is in possession of assets supposedly belonging  
19 to Stanly or one of his related entities.

20 Recently in a fourth case, Mr. Stanly sued the corporation owed by Mrs. Stanly  
21 claiming that her corporation has improperly claimed ownership to certain software  
22 supposedly owned by Mr. Stanly or one of his related entities. That matter is now pending  
23 in United States District Court in San Diego.

24 In any event, Mr. Lopez has been a permanent resident of Florida since July, 2003  
25 when he and his family moved there from California. He owns a residence in Florida with  
26 his wife as Tenancy by the Entirety. His only other assets of any consequence are his  
27 claims against Mr. Stanly and certain software which Stanly claims is owned by him.

28

1 His creditors are almost all consumer type debts which he generally pays each  
2 month. He has not been paying Stanly because he believes that the judgment will be  
3 overturned on appeal. Lopez offered in April, 2006, to pay Stanly in full in return for a  
4 dismissal of this case and that offer was rejected.

5  
6 **III.**

7 **PROCEDURAL STATUS OF THE CASE**

8 Pursuant to Federal Rule of Bankruptcy Procedure 1013(a): Contested petition.

9 The court shall determine the issues of a contested petition at the  
10 earliest practicable time and forthwith enter an order for relief, dismiss the  
11 petition, or enter any other appropriate order.

12  
13 The petition in this involuntary case was filed by a single petitioning creditor Alan  
14 Stanley on June 30, 2005, more than ten months ago. Lopez initially filed a Motion to  
15 Dismiss the Involuntary Petition or to Transfer the case to Florida which was heard on  
16 August 22, 2005. In his response to the Motion to Dismiss, Stanly testified by declaration  
17 that he believed that the debtor had only three or four creditors.

18 On October 3, 2005 (six months ago), Stanly sent out subpoenas to various creditors  
19 of Mr. Lopez. On December 30, 2005, Stanly served more subpoenas to various creditors.  
20 No documents obtained by any of these subpoenas have been turned over to Lopez.

21 On December 12, 2005, Stanly served discovery on Mr. Lopez. The discovery  
22 encompassed issues both as to how many creditors existed on June 30, 2005 and as to  
23 whether or not Mr. Lopez was generally paying his debts as they became due. The  
24 responses were provided to Stanly on or about January 18, 2006. At that time, Lopez  
25 served a significant number of documents on Stanley. On February 8, 2006, after  
26 complaining by Mr. Keehn, Lopez served additional documents. No Motion to Compel  
27 was filed because the sufficiency of the responses were proper.

28

1 Lopez filed a Motion to Bifurcate the Trial which was granted at a hearing on  
 2 December 19, 2005. The Motion to Bifurcate was granted although no trial date has been  
 3 set as of the date of filing this motion.

4 Counsel for Mr. Stanly took the deposition of Mr. Lopez finally on April 27, 2006.  
 5 The deposition was concluded on that day. Again, Mr. Keehn spent considerable time that  
 6 day questioning Mr. Lopez as to whether or not he was generally paying his debts as they  
 7 became due. A significant amount of additional documents were provided by Mr. Lopez  
 8 on that day as well covering the issue of whether or not Mr. Lopez was generally paying  
 9 his debts as they became due.

10 A Status Conference is now set for June 26, 2006 at which time the court has  
 11 indicted it would set a trial date, at least as to the issue of the total number of creditors as  
 12 well as determine how many petitioning creditors there are at this time.

#### 14 IV.

#### 15 **AUTHORITY GRANTING SUMMARY JUDGMENT**

16 Federal Rules of Civil Procedure (hereinafter "FRCP"), Rule 56(b), provides that a  
 17 party "may, at any time, move with or without supporting affidavits for summary judgment  
 18 in the party's favor as to all or any part thereof." Under the provisions of FRCP, Rule  
 19 56(c), summary judgment, either in whole or in part, is appropriate if all of the relevant  
 20 pleadings and evidence reveal "that there is no genuine issue as to any material fact the  
 21 moving party is entitled to judgment as a matter of law."

22 In deciding whether a party is entitled to judgment as a matter of law, the court is to  
 23 keep in mind the obvious purpose of summary judgment "is to isolate and dispose of  
 24 factually unsupported claims or defenses," which is demonstrated by a "'showing' that  
 25 there is an absence of evidence to support the nonmoving party's case." *Celotex v. Catrett*,  
 26 477 U.S. 317, 324-325 (1986); see also, *Wynne v. Tufts University School of Medicine*, 976  
 27 F.2d 791 (1st Cir. 1992) (the purpose of summary judgment is to "pierce the boilerplate of  
 28



1 the pleading and assay the parties' proof in order to determine whether trial is actually  
2 required.”).

3 Indeed, F.R.C.P. 56(e) states in part,

4 When a motion for summary judgment is made and supported as  
5 provided in this rule, an adverse party may not rest upon the mere allegations  
6 or denials of the adverse party's pleading, but the adverse party's response,  
7 by affidavits or as otherwise provided in this rule, must set forth specific  
8 facts showing that there is a genuine issue for trial.

9  
10 In responding to this motion, Stanly is required to come forward with evidence that  
11 there are fewer than 12 creditors. He cannot merely assert that the issue of the number of  
12 total creditors is in dispute. He required to come forward with evidence that Mr. Lopez  
13 was not generally paying his debts as they became due prior to June 30, 2005.

14 In this case, Lopez is entitled to summary judgment because there is no material  
15 issue of fact as to the number of creditors as of June 30, 2005, whther or not Mr. Lopez is  
16 generally paying his debts as they were due a year ago, and as to how many petitioning  
17 creditors there are in any event.

## 18 19 V.

### 20 **THERE ARE INSUFFICIENT PETITIONING CREDITORS AND** 21 **THEREFORE THIS CASE MUST BE DISMISSED**

22 At the time the Involuntary Petition was filed, June 30, 2005, Lopez had at least 22  
23 creditors. He attested to this fact on September 7, 2005 with his Answer, a copy of which  
24 is attached hereto as **Exhibit “A.”** Section 303 of the bankruptcy code therefore requires  
25 that there be at least three petitioning creditors.

26 Section 303 states:

27 (b) An involuntary case against a person is commenced by the filing  
28 with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$12,300 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$10,000 . . .

Seeing that Lopez clearly had more than 12 creditors and therefore three petitioning creditors are required, Stanly began a desperate attempt to find more petitioning creditors. On or about December 20, 2005, more than two months after the first set of subpoenas were served by Stanly to creditors of Lopez (and almost six months after the petition was filed), Northwest Daily News, with a purported claim of \$69.30 was induced by Stanly or his counsel to join the involuntary petition. Eight days later Alternative Resolution Center, with a purported claim of \$1,575.00, joined as well.

Lopez owed no debt to Alternative Resolution Center on June 30, 2005, see Declarations of Francis Lopez, par. --, Declaration of Steven Davis, par. 3.

Therefore there is, at most, only two petitioning creditors in the face of well more than 12 total creditors and this involuntary case must be dismissed.

The requirement that, in the presence of 12 or more creditors, at least 3 must petition before an order for relief issues is not jurisdictional, but is an absolute defense to the issuance of an order for relief. *In Re Kidwell*, (Bkrtcy E.D. Cal. 1993) 158 B.R. 203. If no more petitioning creditors join this case, it is Stanly's burden to prove that the alleged debtor has fewer than 12 creditors. *In Re Smith* (Bkrtcy. N.D.Ga. 1999) 243 B.R. 169, 183.

1 All creditors are to be counted, no matter how small. The court may *not* exclude  
 2 small, recurring or de minimus creditors. *Hornblower & Weeks-Hemphill Noyes v.*  
 3 *Okamoto*, (9<sup>th</sup> Cir. 1974) 491 F.2d 496.<sup>1</sup>

4 Stanly may assert, as his counsel has stated in court several times, that some of the  
 5 creditors of Lopez are not counted because the creditor has received a preference,  
 6 fraudulent conveyance or other avoidable transfer. If this is the case, it is Stanly's burden  
 7 to prove this and he has no had more than eleven months to gather the evidence (including  
 8 the debtor's exam taken of the debtor a month before the involuntary petition wad filed).  
 9 Per the Declaration of Lopez, he made no payments to any of his 22 creditors that were  
 10 outside of the ordinary course of business or were made to delay, hinder or defraud his  
 11 creditors.

12 In summary, alleged debtor has at least 22 creditors as defined by 11 U.S.C.  
 13 §303(b). This case cannot proceed unless three **qualified** creditors petition this court  
 14 today.

## 15 VI.

### 16 **THE ALLEGED DEBTOR IS GENERALLY PAYING HIS DEBTS AS THEY** 17 **BECOME DUE AND THEREFORE THIS CASE MUST BE DISMISSED**

18 Should the court be presented prior to or at the hearing on this motion with two  
 19 more petitioning creditors who are not secured, whose claims are not contingent, and  
 20 whose claims are not subject to a bona fide dispute (11 U.S.C. §303(b)) the next issue will  
 21 be as set forth in 11 U.S.C. §303(h) (1) which provides that an order for relief may *only*  
 22 issue (when the petition is timely controverted) if:

23 "the debtor is generally not paying such debtor's debts as such debts  
 24 become due unless such debts are the subject of a bona fide dispute;."

---

25  
 26  
 27 <sup>1</sup> There is a split of authority on this issue in the circuits. For a discussion on the  
 28 split, the policy reasons behind both sides of that argument see *Matter of Rassi* (7<sup>th</sup> Cir.  
 1983) 701 F.2d 627, where the court decided to follow the Ninth Circuit, which appears to  
 be the majority rule.

1 First, it is Stanly's burden to establish this fact. *In Re Norris*, (Bkrtcy. W.D.La  
2 1995) 183 B.R. 437. The test is applied as of the petition date (here 6/30/05). *In Re*  
3 *Caucus Distributors, Inc.*, (Bkrtcy E.D.Va 1988) 83 B.R. 921.

4 In order to establish that alleged debtor is not paying his debts as they become due,  
5 petitioning creditors must show more than the existence of just a few unpaid debts – as of  
6 the petition date. *Matter of Cinnamon Lake Corp.* (Bkrtcy Fla. 1985) 48 B.R. 70.

7 The court should not turn to any pure mathematical test by any means. *In Re*  
8 *Norris*, (Bkrtcy. W.D.La. 1995) 183 B.R. 437. Moreover, several courts have held that the  
9 alleged debtor's overall ability to pay some or all debts (i.e. a balance sheet test) is not a  
10 proper factor, and is irrelevant to the analysis. *In Re Manchester Lakes Assoc.*, (Bkrtcy.  
11 E.D.Va. 1985) 47 B.R. 798; *Matter of Itill*, (Bkrtcy. D.Minn. 1980) 5 B.R. 79.

12 There is no bright line rule to guide the court in determining whether a particular  
13 debtor is generally paying his debts as they become due. Instead, courts apply a balancing  
14 test where the court must compare the number of debts unpaid and paid each month, the  
15 amount of delinquency, the materiality of any nonpayment and the general nature of the  
16 debtor's financial affairs. *In Re Leek Corp.*, (Bkrtcy. Fla. 1985) 52 B.R. 311; *In Re Better*  
17 *Care Ltd.*, (Bkrtcy. N.D.Ill. 1989) 97 B.R. 405. Courts in this circuit have held that failure  
18 to pay one creditor does not establish that a debtor generally was not paying his debts as  
19 they come due. *In Re H.I.J.R. Property*, (D. Colo. 1990) 115 B.R. 275.<sup>2</sup>

20 Finally, the court may in fact examine whether there is a reasonable basis for  
21 nonpayment exists, other than a bona fide dispute, such as commercial practice. *In Re*  
22 *Systems Communications, Inc.*, (Bkrtcy. M.D.Fla. 1999) 234 B.R. 145.

23 In addition, the recently enacted S.B. 256 modified Section 303 in an important  
24 respect. As revised by S.B. 256, 11 U.S.C. §303(h)(1) now reads:

25 “(h) . . . [A]fter trial, the court shall order relief against the debtor in

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26  
27 <sup>2</sup> The general rule has an exception, that where there are only one or two creditors,  
28 a single creditor's claim will satisfy the not generally paying debts standard. *In Re H.I.J.R.*  
*Properties, supra*, 115 B.R. at 277. The exception does not apply here, as alleged debtor  
has dozens of creditors.

1 an involuntary case under the chapter under which the petition was  
 2 filed, only if –

3 (1) the debtor is generally not paying such debtor's debts as  
 4 such debts become due unless such debts are the subject of a bona fide  
 5 dispute as to liability or amount; or ...”

6 The addition of the phrase “as to liability or amount” clearly evidences the intent of  
 7 Congress to exclude, from the analysis of “generally paying his debts as they become due,”  
 8 debts whose amounts are in controversy. .

9 This revision is the law now, and applies with respect to any involuntary case  
 10 commenced before, on or after enactment of the Act. (See Editor's Notes to 11 U.S.C.  
 11 §303, Footnote 11, U.S. Bankruptcy Code as Amended by S.B. 256, Reprinted with  
 12 permission by the NACBA, updated March 21, 2005. Thus, Stanly may not, for the  
 13 purpose of this case, point to his own debt or any other disputed debt, as evidence that the  
 14 putative debtor is not generally paying his debts as they become due. In any event, the  
 15 alleged debtor has appealed the judgment entered against him in favor of Stanly.

16 The evidence establishes that Mr. Lopez was generally paying his debts as they  
 17 became due prior to June 30, 2005. He pays his bills generally as they are received. The  
 18 monthly expenses are overwhelmingly consumer related, general household expenses. If  
 19 they are not generally paid as they become due, they are cancelled by the creditor  
 20 obviously. Newspapers and utilities and insurance companies do not continue to provide  
 21 services if the buyer is not generally paying his debts as they become due. Mortgages and  
 22 secured creditors foreclose if the debtor is not generally paying his debts as they become  
 23 due. Bills are occasionally paid by Mr. Lopez beyond the due date, but with very few  
 24 exceptions, within 30 days of receipt. This will be the testimony as to the 22 creditors that  
 25 Lopez pays monthly.

26 Suffice to say that, applying these legal principals to the facts, Stanly will fail in his  
 27 burden to prove that alleged debtor is not generally paying his debts as they become due.  
 28

VII.

CONCLUSION

Alleged Debtor prays that this court grant him summary judgment and dismiss this case, and for other orders which are just.

Dated: May<sup>29</sup> 2006

Respectfully submitted

By: 

M. Jonathan Hayes  
Attorney for Alleged Debtor Francis  
Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: 

M. Jonathan Hayes  
Attorney for Francis J. Lopez



**DECLARATION OF FRANCIS LOPEZ**

I, Francis Lopez, declare and state as follows:

1. I am the alleged debtor in this involuntary proceeding. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. I spoke with Eleanor Hypes, who is a clerk at NWF Daily News who signed the petition. She has no idea what she got herself into, but was very nervous and reluctant to talk. I disputed the bill with her, and she gave me the name of a payables clerk to talk to, who hasn't called me back yet.

3. Attached hereto as Exhibit "A" is a true and correct copy of the Answer I filed in this case.

4. I did not owe any debt to Alternative Resolution Center on June 30, 2005.

5. I have been a permanent resident of Florida since July, 2003 when my family and I moved there from California. I own a residence in Florida with my wife as Tenancy by the Entirety. My only other assets of any consequence are my claims against Mr. Stanly and certain software I own which Stanly claims is owned by him.

6. My creditors are almost all consumer type debts which I generally pay each month, generally as the bills are received. The monthly expenses are overwhelmingly consumer related, general household expenses. If they are not generally paid as they become due, they are cancelled by the creditor. Newspapers and utilities and insurance companies do not continue to provide services if the buyer is not generally paying his debts as they become due. I was paying my mortgages and other secured creditors generally as they become due. Bills are occasionally paid beyond the due date, but with very few exceptions, within 30 days of receipt.

7. I have not been paying Stanly because I believe that the judgment will be overturned on appeal. I offered in April, 2006, to pay Stanly in full in return for a dismissal of this case and that offer was rejected.

1 8. None of the 22 creditors are an employee or insider of mine.

2 9. None of the 22 creditors received any payments or transfers from me for less  
3 than fair value or with my intent to delay, hinder or defraud my creditors.

4 10. None of the 22 creditors are contingent as to liability or disputed except as to  
5 Northwest Daily News.

6 11. I was generally paying my debts as they became due prior to June 30, 2005.

7  
8 I declare under penalty of perjury that the foregoing is true and correct to the best of  
9 my knowledge, information and belief. Executed on this \_\_\_th day of May, 2006 at Destin,  
10 Florida.

11  
12  
13 By: \_\_\_\_\_  
14 Francis J. Lopez  
15  
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20  
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22  
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28



**DECLARATION OF M. JONATHAN HAYES**

I, M. Jonathan Hayes, declare and state as follows:

1. I am an attorney, authorized to practice before this court. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibits B and C are true and correct copies of Joinder in Involuntary Petition for Northwest Daily News and Alternative Resolution Center.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this 29th day of May, 2006 at Woodland Hills, California.

By: \_\_\_\_\_

M. Jonathan Hayes

**DECLARATION OF STEVEN DAVIS**

That I, Steven Davis, say and declare as follows:

1. That I am the principal of ARC, an alternative dispute resolution service here in Los Angeles. That ARC administered a discovery referee pursuant to court order in the matter of *Lopez v. Stanly*, Case Number GIN029692.

2. That I received a telephone call from Alan Stanly, who made certain representations to me in connection with his request that I sign a statement indicating that there was an unpaid balance to ARC of approximately \$1,500.00. That representations were made to me in that call, although I do not remember exactly what they were, and because I was very busy and did not have time to double or triple check the representations, I signed the statement.

3. Subsequently I received a call from Mr. Lopez inquiring as to why I would sign the statement since he did not owe ARC any money, and it appears after careful review of my records, that Mr. Lopez is correct. Mr. Lopez has no outstanding balance and my signature was obtained in error.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2006 at Los Angeles, California

  
Steven Davis

1 M. Jonathan Hayes (Bar No. 90388)  
2 **Law Office of M. Jonathan Hayes**  
3 21800 Oxnard St, Suite 840  
4 Woodland Hills, CA 91367  
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05 SEP -7 AM 9:27  
CLERK  
U.S. BANKRUPTCY CT.  
SD DIST. OF CALIF.

8 Attorneys for Alleged Debtor Francis Lopez

9 **UNITED STATES BANKRUPTCY COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
11 **SAN DIEGO DIVISION**

12 In Re:

13 FRANCIS J. LOPEZ,  
14 Alleged Debtor

CASE NO. 05-05926-PBINV

Involuntary Chapter 7

**ANSWER OF ALLEGED DEBTOR TO  
INVOLUNTARY PETITION**

15  
16  
17  
18  
19  
20  
21  
22  
23 COMES NOW the alleged debtor Francis J. Lopez ("alleged debtor" or "Lopez")  
24 and answers the involuntary petition as follows:

25 1. Alleged debtor admits that the matters raised in the petition are a core  
26 proceeding pursuant to 28 U.S.C. §157(b)(1) and (b)(2)(4).  
27  
28

2. Alleged debtor denies that he has been domiciled in this district for the 180 days preceding the filing of the involuntary petition. Alleged debtor admits that a bankruptcy case concerning debtor's affiliate is pending in the district.

3. Alleged debtor denies that his debts are primarily business debts.

4. Alleged debtor has authority to answer the involuntary petition pursuant to Federal Rules of Bankruptcy Procedure Rule 1011(a).

#### FIRST AFFIRMATIVE DEFENSE

5. Alleged debtor asserts that the court lacks subject matter jurisdiction on the basis that the alleged debtor has more than 12 creditors and the petition was executed and initiated by only one creditor. Pursuant to FRBP Rule 1003(b), a list of all of the alleged debtor's creditors, addresses and a brief statement of the nature of their claims is attached hereto and incorporated by reference as Exhibit A. Alleged debtor reserves the right to supplement, add or amend the information contained in Exhibit A as further information is obtained.

#### SECOND AFFIRMATIVE DEFENSE

6. Alleged debtor asserts that the court lacks subject matter jurisdiction on the basis that the petitioning creditor is disqualified from bringing an involuntary petition against this alleged debtor because the alleged debt that constitutes the basis of petitioning creditor's claim is subject to a bona fide dispute.

#### THIRD AFFIRMATIVE DEFENSE

7. Alleged debtor alleges that the petition was filed in bad faith and for the purpose of disrupting on-going litigation between the alleged debtor and the petitioning creditor.

#### FOURTH AFFIRMATIVE DEFENSE

8. Alleged debtor asserts that the order for relief should not issue because the alleged debtor was, as of the date of the petition, generally paying his debts as they became due, unless those debts were subject to a bona fide dispute.

FIFTH AFFIRMATIVE DEFENSE

9. Alleged debtor asserts that the case should be transferred to Florida which is the proper venue.

PRESERVATION OF CLAIMS

10. Alleged debtor hereby reserves and shall not be deemed by this answer to have waived his rights to a cross claim or other relief pursuant to 11 U.S.C. §303(i)(1) and (2) and all subparts thereto, and as against petitioning creditors and/or those acting in conjunction with or counseling them.

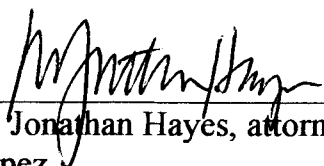
WHEREFORE, alleged debtor prays:

1. That the court decline to enter any order for relief pursuant to 11 U.S.C. §303;
2. That the court dismiss the petition forthwith;
3. That the court thereafter permit the alleged debtor to seek compensation by counterclaim or other appropriate method for the entry of a judgment against petitioning creditor and other appropriate parties, pursuant to 11 U.S.C. §303(i); and
4. Such other relief as the court may deem proper.

Respectfully submitted,

LAW OFFICES OF M. JONATHAN HAYES

Dated: Sept 6, 2005

By:   
M. Jonathan Hayes, attorney for Francis J. Lopez

1  
2  
3 Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011  
4 that the relief provided by the order is the relief granted by the court.  
5

6 Submitted by:

7  
8 By: 

9 M. Jonathan Hayes  
Attorney for Francis J. Lopez  
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FRANCIS LOPEZ  
EXHIBIT A  
LIST OF CREDITORS

Progressive Insurance  
PO Box 31260  
Tampa, FL 33631  
Acct. 37287380-4  
\$157.20  
Insurance, Auto

Coastal Community Insurance  
12139 Panama City Beach Pkwy.  
Panama City Beach, FL 32407  
Policy No. LHQ336763  
\$1,013.00  
Insurance, Flood (Property)

Quicken Platinum Card  
PO Box 44167  
Jacksonville, FL 32231  
\$848.00  
Goods and services, 1998- 2005

Okaloosa Gas District  
PO Box 548  
Valparaiso, FL 32580  
\$45.00  
Utilities

Northwest Florida Daily News  
200 Racetrack Rd.  
Ft. Walton Beach, FL 32549  
\$45.00  
Newspaper

Kelly Plantation Owners Association  
4393 Commons Drive E.  
Destin, FL 32541  
\$550.00  
Homeowner's Association

Allstate Floridian  
54 Beal Parkway  
Ft. Walton Beach, FL 32548  
\$1900.00  
Homeowners Insurance

Texaco / Shell  
PO Box 9151  
Des Moines, IA 50368  
Acct. No. 77-917-6550-1  
\$290.00  
Gasoline and related

Bank Of America  
PO Box 1390  
Norfolk, VA 23501  
Acct. No. 4050860512429141  
Credit Card, goods and services  
\$2386.00

Verizon Wireless  
PO Box 660108  
Dallas, TX 75266  
Acct. No. 81955380600001  
\$45.00  
Utility – telephone

Cox Communications  
PO Box 60970  
New Orleans, LA  
Acct. No. 0018710003886502  
Utility – television and Internet  
\$112.00

Union Bank of California  
8155 Mercury Ct.  
San Diego, CA 92111  
Settlement of Union Bank v. Francis Lopez, \$15,000 original balance  
\$4,000.00

Bankcard Services  
PO Box 15287  
Wilmington, DE 19886  
Acct. No. 5490999178488929  
\$10,000.00  
Goods and services – 2001- 2005

Cingular Wireless  
PO Box 8229  
Aurora, IL 60572  
Acct. No. 0050443578  
\$125.00  
Utilities – telephone



Wayne Wise  
810 Red Tanager Ct.  
Nashville, TN 37221  
\$15,000.00  
Personal Loan

Valley Forge Life Insurance  
100 CNA Drive  
Nashville, TN 37214  
Acct. No. VITU045825  
\$0.00 (\$486.00 per year)  
Life Insurance

American Home Shield  
PO Box 849  
Carroll, IA 51401  
Acct. No. 58449061  
\$128.00  
Home appliance insurance

Citi Cards  
PO Box 6414  
The Lakes, NV 88901  
Acct. No. 5424180306665024  
\$32,515.00  
Goods and Services, 1994 - 2005

Household Bank / HSBC  
PO Box 5222  
Carol Stream, IL 60197  
Acct. No. 5176690006732635  
Goods and Services, 2003 - 2005  
\$5,000.00

American Express  
PO Box 297804  
Ft. Lauderdale, FL 33329  
Acct. No. 378349802283007  
\$22,000.00  
Goods and Services, 1994 - 2004  
Note: Some of this debt may be owed by Prism and/or Stanly, though I have personal  
guarantee

Ft. Walton Beach Medical Center  
1000 Mar Walt Drive  
Ft. Walton Beach, FL 32547  
\$1600.00  
Medical and Health services  
Making payments of \$100.00 month

Alan Stanly  
1569 Berkshire Ct.  
San Marcos, CA 92069  
\$50,000.00  
Judgment in Union Bank v. Stanly (cross-complaint by Stanly)  
Currently under appeal in CA

1  
2  
3 **PROOF OF SERVICE**

4 I, MJ Hayes, declare:

5 I am a resident of the State of California and over the age of eighteen years, and not  
6 a party to the within action; my business address is 21800 Oxnard St., Suite 840,  
7 Woodland Hills, CA 91367. On September 6, 2005, I served the within documents:

8 **ANSWER OF ALLEGED DEBTOR TO INVOLUNTARY PETITION**

9 by transmitting via facsimile the document(s) listed above to the fax  
10 number(s) set forth below on this date before 5:00 p.m.

11 y by placing the document(s) listed above in a sealed envelope with postage  
12 thereon fully prepaid, in the United States mail at Los Angeles, California  
13 addressed as set forth below.

14 .. by causing personal delivery by \_\_\_\_\_ of the document(s) listed  
15 above to the person(s) at the address(es) set forth below.

16 .. by placing the document(s) listed above in a sealed \_\_\_\_\_  
17 envelope and affixing a pre-paid air bill, and causing the envelope to be  
18 delivered to a \_\_\_\_\_ agent for delivery

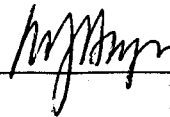
19 .. by personally delivering the document(s) listed above to the person(s) at the  
20 address(es) set forth below.

21 L. Scott Keehn  
22 Robbins & Keehn, APC  
23 530 B Street, Suite 2400  
24 San Diego, CA 92101

25 I am readily familiar with the firm's practice of collection and processing  
26 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal  
27 Service on that same day with postage thereon fully prepaid in the ordinary course of  
28 business. I am aware that on motion of the party served, service is presumed invalid if  
postal cancellation date or postage meter date is more than one day after date of deposit for  
mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at  
whose direction the service was made.

Executed on September 6, 2005, at Los Angeles, California.



MJ Hayes

ROBBINS & KY - APC  
ATTORNEYS  
2100 DEER CREEK BLVD., SUITE 200  
SAN DIEGO, CALIFORNIA 92121  
TEL: (619) 594-1100 FAX: (619) 594-1101

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:

FRANCIS J. LOPEZ,

Alleged Debtor.

CASE NO. 05-05926-PBINV

Involuntary Chapter 7

NORTHWEST FLORIDA DAILY NEWS'  
JOINDER IN INVOLUNTARY PETITION  
FOR FRANCIS J. LOPEZ

Dept.: Four  
Judge: Hon. Peter W. Bowle

Northwest Florida Daily News ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at NORTHWEST FL  
DAILY NEWS. Petitioner is  
owed \$ 69.30 by Lopez as of the date hereof (the "Claim"). The Claim is for  
ADVERTISEMENT + SUBSCRIPTION. Petitioner did not  
acquire its Claim by transfer from another entity.

B-1  
COPY

1           2.     Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its  
2 existence, nature or amount;

3           3.     Petitioner requests that an order for relief be entered against Lopez under Chapter 7  
4 of Title 11 of the United States Code.

5           4.     Petitioner declares under penalty of perjury that the foregoing is true and correct  
6 according to the best of its knowledge, information and belief.

7  
8 Dated: 12-20-05

By: Eleanor Lopez

ROBBINS & K. APC  
ATTORNEYS  
2400 UNDERSTANDING - 500 W. STREET  
SAN FRANCISCO, CALIFORNIA 94111  
TELEPHONE (415) 233-1700 - TELECOM (415) 344-0915

B-2

ROBBINS & KEEHN, APC  
ATTORNEYS AT LAW  
2460 UNION BANK BUILDING 530 'E' STREET  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 232-1700 TELECOPIER (619) 544-9026

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:

FRANCIS J. LOPEZ,

Alleged Debtor.

CASE NO. 05-05926-PBINV

Involuntary Chapter 7

ALTERNATIVE RESOLUTION CENTER'S  
JOINDER IN INVOLUNTARY PETITION  
FOR FRANCIS J. LOPEZ

Dept.: Four

Judge: Hon. Peter W. Bowie

Alternative Resolution Center ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at 11601 Wilshire Blvd. Suite 1950 Los Angeles, CA 90025. Petitioner is owed \$1,575.00 by Lopez as of the date hereof (the "Claim"). The Claim is for services rendered by Judge Sarokin serving as a discovery referee, stipulated to by the parties, and appointed by the court at the request of Lopez. Petitioner did not acquire its Claim by

C-1

1 transfer from another entity.

2 2. Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its  
3 existence, nature or amount.

4 3. Petitioner requests that an order for relief be entered against Lopez under Chapter 7 of  
5 Title 11 of the United States Code.

6 4. Petitioner declares under penalty of perjury that the foregoing is true and correct  
7 according to the best of its knowledge, information and belief.

8  
9 Dated: Dec 28 05

By: 

ROBBINS & KEEHN, APC  
ATTORNEYS AT LAW  
2459 UNION BANK BUILDING - 530 "B" STREET  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 232-1700 TELECOPIER (619) 544-8005

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

**L. Scott Keehn  
Robbins & Keehn, APC  
530 "B" Street, Suite 2400  
San Diego, CA 92101**

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

**Executed on May 29, 2006, at Woodland Hills, California.**

Cassidy Hayes  
(Type or print name)

*Chavez*  
(Signature)